

Remarks

Claims 1-10 and 12-18 have been cancelled, and claim 11 has been amended. Accordingly, only claim 11 remains for the Examiner's further consideration.

Claim 11 calls for a plurality of spaced apart footings and a plurality of columns. A column support supports the columns on the footings and a roof structure is supported on the columns. The roof structure has a flat, generally horizontal, upwardly facing surface surrounded by a border frame. The upwardly facing surface and border frame define a pool for containing water to a depth of approximately one-inch or more. Water fills the pool to a depth of approximately one-inch or more.

Much of cancelled claim 12 and further amendments have been incorporated in claim 11. According to the amended claim 11, the column support for each of the columns comprises a vertically adjustable column-supporting leveling plate above each footing. A plurality of bolts have lower portions embedded in, and vertical upper portions projecting above, each of the footings. First nuts are threaded on the upper portions of the bolts, the plates are supported on the first nuts, and second nuts threaded on the upper portions of the bolts clamp the plates down on the first nuts. The roof structure is capable of adjustment to make the upwardly facing surface horizontal by vertical adjustment of the columns. Vertical adjustment of the columns can be accomplished by vertical adjustment of the leveling plates which is effected by vertical adjustment of the first nuts. Nothing similar to a building structure as thus defined is shown in any of the prior art or any reasonable combination thereof.

Bourne discloses a reservoir 24 for containing liquid. However as noted by the Examiner, Bourne does not disclose a plurality of spaced apart footings, a column disposed on each of the footings, a column support for each of the columns, and supporting a roof on the columns.

Paquette discloses a parking structure 10 having an upper deck comprised of panels 12-28 mounted on a framework 30. Footings 32 are buried in the ground at locations corresponding to the columns 34-40. However, the upper deck is in no

sense a roof structure, and the columns clearly are not adjustable. There is little in this patent on a parking structure that would suggest any modification of the Bourne energy-saving roof for a commercial or industrial building.

Macklin was cited to show a column support including a plate 16 and nuts 22 above and below the plate 16, the nuts being threaded on anchor bolts 14.

Munoz need not be discussed because it was cited against features of claims which have been cancelled.

Combining Bourne and Paquette with the added features of Macklin is done in the rejection without the suggestion in the prior art for doing so. There is nothing in the prior art to suggest vertically adjustable columns for leveling a pool on the roof structure of a building. It is important that the roof structure be adjustable so that the pool may be orientated horizontally. This is an important feature of applicants invention and there is no suggestion in any of the prior art for doing it. The only suggestion can be found in applicant's own disclosure. Applicant's invention, as the title suggests, is a "Building in Suspension".

A teaching reference is absolutely essential for a combination of references to be proper. In this connection the case of ACS Hospital Systems, Inc. v. Montefiore Hospital, 221 USPQ 929 (1984) is pertinent wherein the Court of Appeals for the Federal Circuit said:

"Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined *only* if there is some suggestion or incentive to do so."

Also pertinent to the matter of "hindsight" is the decision in Orthopedic Equipment Co., Inc. v. United States 217 USPQ 193 (1983) wherein the Court of Appeals for the Federal Circuit said:

"The question of nonobviousness is a simple one to ask, but difficult to answer. The person of ordinary skill in the art at the time of the patentee's invention, which in this case is May 28, 1958, is

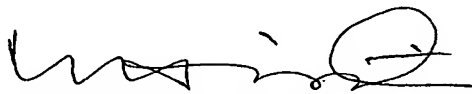
presumed to have before him all of the relevant prior art. As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be nonobvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the questions of nonobviousness in a court of law."
(Emphasis Added)

In view of the foregoing, this application is now believed to be in condition for allowance and such action is most respectfully solicited.

Applicant requests a one-month extension of time to respond to the Action of July 21, 2003. Enclosed is a check for \$440.00 to cover the cost of the one-month extension plus the required RCE fee. If it is determined that any additional fees are due, the Commissioner is hereby authorized and respectfully requested to charge such additional fees to Deposit Account No. 50-0852.

Respectfully submitted,

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